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Paper No. 9

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OFFICE OF PETITIONS

In re Application of
Russell E. Shetler, Jr. et al.
Application No. 10/007,273
Filed: October 26, 2001
Attorney Docket No.
11564.0028.NPUS01/ALL

DECISION ACCORDING
STATUS UNDER
RULE 47(a)

This is in response to the petition under 37 CFR 1.47(b), which is being considered as being filed under 37 CFR 1.37 (a)¹ filed October 28, 2002.

The petition is **GRANTED**.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

A "Notice to File Missing Parts of Non-Provisional Application" ("Notice") was mailed to petitioner on January 8, 2002, indicating that oath or declaration was missing. The Notice also advised petitioner that a \$130.00 surcharge was also due because a proper oath or declaration was not timely filed. The Notice set forth a period of reply of two months from its mailing date and indicated that extensions of time for reply were available pursuant to 37 CFR 1.136(a). In response thereto, petitioner filed a declaration without the signature of inventor Andrew Thomas Margraff, a petition for a three (3) month extension of time and the requisite late surcharge fee. On June 26, 2002 a Notice of Incomplete Response was mailed to petitioner, indicating that the signature of inventor "Andy Margraff" was missing.

In response thereto, petitioner filed the instant petition. Petitioner also filed several accompanying exhibits through which petitioner established that although inventor Margraff was presented with a complete copy of the application papers, the inventor has, to date, failed to execute the same. Inventor Margraff's failure to return the declaration, in spite of his presumed receipt of the same, will be interpreted as constructive refusal to join the prosecution of the application.

Petitioner has shown that the non-signing inventor has refused to join the filing of the above-identified application after having been presented with the application papers,

and the above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

Pursuant to the authorization provided by petitioner, Deposit Account 01-2508 will be charged \$130.00 for the petition fee.

This application will be forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries concerning this decision should be directed to Gregory J. Toatley, Jr. at (703) 305-4066 or to the undersigned at (703) 305-0010.



Kenya A. McLaughlin
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

¹ See MPEP 409.03 (a)

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